

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

v.

JOSE MERCED, et al

Defendants.

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CRIMINAL NO. 03-30008-MAP

THE GOVERNMENT'S NOTICE WITH  
RESPECT TO RULE 404(b) EVIDENCE

The United States of America, by Michael J. Sullivan, United States Attorney for the District of Massachusetts, responds to requests made by Cirilo Delgado, Robert Martin and Sean Garcia for notice of potential 404(b) evidence.

1. Cirilo Delgado

The government does not intend to introduce evidence of uncharged criminal conduct against Cirilo Delgado in its case-in-chief. However, as set forth in the government's response to Mr. Delgado's motion to exclude evidence of his prior convictions, the government may seek to introduce evidence of Mr. Delgado's prior convictions for drug trafficking to demonstrate his knowledge and/or intent to participate in the conspiracy.

2. Robert Martin

The government has addressed the admissibility of all potential 404(b) evidence regarding Martin in its response to Martin's motion in limine. In sum, the government intends to

introduce testimonial evidence relating to the background and nature of Martin's relationship with other co-conspirators. Specifically, the government intends to introduce testimony from Taiwan Jones and Jose Merced in its case-in-chief regarding their lengthy criminal association with Martin.

The government may introduce evidence of Martin's association with Jerome Capelton who was convicted of conspiracy to possess with intent to distribute cocaine and cocaine base and possession with intent to distribute cocaine base on September 27, 2001, and received a sentence of 360 months imprisonment. During the investigation of Mr. Capelton, law enforcement agents supervised a controlled purchase of cocaine and ultimately seized approximately \$8,000.00 in pre-marked buy money from Capelton and Martin who were stopped by law enforcement agents shortly after the transaction. During the stop, Martin gave a false name to the police.

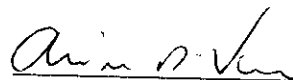
3. Sean Garcia

The government does not intend to introduce evidence of uncharged prior bad acts in its case-in-chief against Garcia.

Respectfully submitted,

MICHAEL J. SULLIVAN  
United States Attorney

By:

  
Ariane D. Vuono  
Thomas J. O'Connor, Jr.  
Assistant U.S. Attorneys

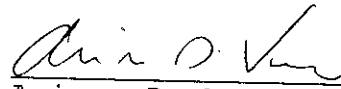
Dated: September 7, 2005

CERTIFICATE OF SERVICE

Hampden, ss.

Springfield, Massachusetts  
September 7, 2005

I, Ariane D. Vuono, Assistant U.S. Attorney, do hereby certify that I have served a copy of the foregoing by mail on defense counsel.

  
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Ariane D. Vuono  
Assistant U.S. Attorney